S.B.Civil Second Appeal No.33/07
Kailash Chandra v. Govind Singh

Date of order: 17.4.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. Tribhuvan Gupta for the appellant.

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This appeal is against the concurrent finding of fact recorded by the two courts below for the personal bonafide necessity of the plaintiff for the suit premises in judgment and decree of the trial court dated 20.9.2003 and dismissal of the appeal by the judgment and decree dated 26.10.2006.

The learned counsel for the appellant submitted that the son of the plaintiff Chirag left the India and is doing the marble business in the Spain and, therefore, so far as the need of plaintiff's son Chirag is concerned, that has come to an end, the petitioner-appellant, therefore, submitted an application under Order 6 Rule 17,C.P.C. In this second appeal today. In the application, the appellant-tenant stated that he came to know about this fact subsequent to the decision of the first appellate court and, therefore, he has submitted application for amendment of the written statement in second appellate stage.

The learned counsel for the appellant also submitted that the courts below committed serious error of law in deciding the question of personal bona fide necessity of the plaintiff and further two courts below in very cursory manner decided the issue of partial eviction in favour of the plaintiff.

I considered the submissions of the learned counsel for the appellant.

It is clear from the application under Order 6 Rule 17, C.P.C. that the appellant has moved application in second appeal for amendment of written statement on the ground that the plaintiff's son has started business at Spain and left the India. For this a vague plea has been taken that the plaintiff came to know about this fact only after the decision of the first appeal. Be it as it may be, the plaintiff's suit was for running a hotel business as well as doing the travelling agent business. He has stated that his son will also help. The plaintiff obtained the diploma in hotel business. The plaintiff's son also was diploma holder in hotel business.The suit for eviction of tenant was not only on account of need of the plaintiff's son but in fact it was for the need of the plaintiff. Therefore, the plaintiff's son's going abroad is of no relevance. Therefore, the application under Order 6 Rule 17, C.P.C. deserves to be dismissed because of the reason that the application is vague. The plaintiff's son's business in Spain is irrelevant and because of the reason that the plaintiff's need has not come to an end because of the said fact. Suit premises is 25' x 12'. The two courts below concurrently, not only found the personal bona fide necessity of the plaintiff as genuine but also found that looking to the nature of the business, the need of the plaintiff cannot be satisfied by partial eviction of the tenant. In view of the above no substantial question of law is involved in this

appeal and the appeal of the appellant deserves to be dismissed.

However,the learned counsel for the appellant prayed that some time may be granted to the appellant for vacating the suit premises. I considered the prayer of learned counsel for the appellant and looking to the facts of the case, this Court is of the view that the appellant be granted time up to 30.4.2008 to vacate the suit premises.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of two months from today that he shall hand over the vacant possession to the landlord by or before 30.4.2008 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decretal amount, if due, and shall also pay the rent up to 30.4.2008 (in advance) within a period of two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.5.2008.

In case of non-compliance of the order or default in payment of amount mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA),J.

mlt.